

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0390**

In re the Marriage of: Kristina Marie Russell, petitioner,
Respondent,

vs.

Holt Leif Russell, Appellant.

**Filed August 7, 2023
Affirmed in part as modified, reversed in part, and remanded
Johnson, Judge**

Ramsey County District Court
File No. 62-FA-18-2026

Jeffrey M. Markowitz, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis,
Minnesota (for respondent)

Holt Leif Russell, St. Paul, Minnesota (*pro se* appellant)

Considered and decided by Gaïtas, Presiding Judge; Johnson, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Kristina Marie Russell (now known as Kristina Mariani) and Holt Leif Russell were married for approximately five years before their marriage was dissolved. They have one joint child. This appeal is focused primarily on the issues of parenting time and child support. We conclude that the district court did not err by ordering a parenting-time schedule that limits Holt's parenting time to less than what he requested. We also conclude

that the district court did not err by not deviating downward from the presumptive child-support obligation. But we conclude that the district court erred by assigning responsibility for certain debts to Holt, and we correct that error by modifying the judgment and decree to reflect the proper amount. We further conclude that the district court erred by not making the findings of fact that are necessary for a ruling on Kristina's request for need-based attorney fees. Therefore, we affirm in part as modified, reverse in part, and remand to the district court for further proceedings on Kristina's request for need-based attorney fees.

FACTS

Holt and Kristina were married in October 2016. At that time, they lived together in a house in Eagan. Shortly after they were married, Holt moved out of the Eagan house and moved into his mother's house in St. Paul. In October 2017, Kristina gave birth to a child prematurely while she was visiting relatives in Wisconsin. Holt went to Wisconsin and stayed with Kristina for a week after the child's birth and then returned to Minnesota. Kristina remained in Wisconsin for two months, during which time Holt visited occasionally. When Kristina returned to Minnesota, the parties rented an apartment in St. Paul that was two blocks from Holt's mother's house. The parties stayed together in the apartment for only a few days before Holt moved back to his mother's house. The parties never lived together thereafter.

In August 2018, Kristina petitioned for dissolution of the marriage. Shortly thereafter, the parties agreed to an informal parenting-time schedule under which Holt had

the child on two weekday evenings and from Saturday morning to Sunday afternoon of each week.

The dissolution matter was tried on two days in May 2021. Kristina called six witnesses; Holt called five. In August 2021, the district court entered its judgment and decree along with a memorandum of law. The district court awarded the parties joint legal custody and awarded Kristina sole physical custody. The district court ordered a parenting-time schedule that initially provided Holt with overnight parenting time that alternated on a weekly basis between Thursday to Friday and Friday to Sunday, with an expansion in September 2022 to overnight parenting time from Thursday to Sunday of each week. The district court also stated that, in 2025 or thereafter, Holt could “request up to 164 overnights per year, if such an expansion of parenting time is in the best interests of the child.” The district court also ordered that, effective July 1, 2021, Holt pay Kristina basic child support and child-care support. In addition, the district court denied Kristina’s request for need-based attorney fees. The judgment and decree includes numerous other provisions that are not at issue on appeal.

In September 2021, Holt filed a motion for amended findings or a new trial. In November 2021, the district court denied Holt’s motion except that, pursuant to an agreement between the parties, the district court referred the issue of child support to a child support magistrate (CSM) for reconsideration of certain issues and a recalculation of the amount of child support. The parties submitted documentary evidence, and the CSM conducted an evidentiary hearing, at which both parties testified. In February 2022, the CSM filed an order providing that, effective January 1, 2022, Holt must pay Kristina basic

child support of \$953 per month and child-care support of \$858 per month, for a total of \$1,811 per month.

Holt filed a notice of appeal, and Kristina filed a notice of related appeal.

DECISION

I. Parenting Time

Holt first argues that the district court erred by ordering a parenting-time schedule that provides him with less parenting time than he requested.

In dissolving a marriage, a district court shall determine the parties' parenting time by evaluating all factors that are relevant to the best interests of the parties' child, including 12 factors identified by statute. Minn. Stat. § 518.17, subd. 1(a) (2022); *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). In considering the statutory best-interests factors, a district court "must make detailed findings on each of the factors . . . based on the evidence presented and explain how each factor led to its conclusions and to the determination of custody and parenting time." Minn. Stat. § 518.17, subd. 1(b)(1). In doing so, the district court "may not use one factor to the exclusion of all others, and the court shall consider that the factors may be interrelated." *Id.* This court's review of a district court's best-interests findings "is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Hansen*, 908 N.W.2d at 596 (quotation omitted).

A. Best-Interests Analysis

Holt argues that the district court erred in three of its findings on best-interests factors and in its ultimate determination to award him less parenting time than he sought.

1. First and Sixth Best-Interests Factors

Holt first contends that the district court erred in analyzing the first and sixth best-interests factors by finding that, before and at the time of trial, Kristina had been the child's primary caregiver.

The first best-interests factor requires a district court to consider "a child's physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child's needs and development." Minn. Stat. § 518.17, subd. 1(a)(1). In analyzing that factor, the district court found that Kristina "has been the primary person to meet the child's physical, emotional, cultural, spiritual, and other needs, and she has largely been successful." The sixth best-interests factor requires a district court to consider "the history and nature of each parent's participation in providing care for the child." *Id.*, subd. 1(a)(6). In analyzing that factor, the district court reiterated that Kristina was the child's primary caregiver.

Holt contends that the district court erred by finding that Kristina has been the child's primary caregiver. He cites his own testimony that he was significantly involved in the child's life because he attended medical appointments, did video calls with the child three days a week, and consistently exercised his right to in-person parenting time.

The record supports the district court's finding that Kristina was the child's primary caregiver. The court-appointed custody evaluator reported that Holt "did not participate a great deal in the day-to-day care of [the child], or, in fact, spend much time with him or obviously try to do so, until [Kristina] secured an attorney and began the divorce process." Kristina's trial testimony and exhibits also show that Holt was not significantly involved

in parenting the child until after Kristina petitioned for dissolution. The custody evaluator also opined that Holt was not as “present” as he should have been during the year after the child’s birth. At trial, the custody evaluator testified that the fact of the parties’ separate residences—which was attributed to Holt’s decision to move out of the parties’ apartment into his mother’s house shortly after the child’s birth—contributed to Holt’s lack of involvement in the child’s life.

Thus, the district court did not err by finding that, before and at the time of trial, Kristina was the child’s primary caregiver.

2. *Seventh Best-Interests Factor*

Holt next contends that the district court erred in analyzing the seventh best-interests factor by relying on evidence of his relationship with his non-joint child, who lives in Washington state.

The seventh best-interests factor requires a district court to consider “the willingness and ability of each parent to provide ongoing care for the child; to meet the child’s ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time.” *Id.*, subd. 1(a)(7). The district court recited and credited evidence that Holt has not demonstrated a commitment to meeting the needs of an older, non-joint child. The district court referred to the custody evaluator’s determination that “Holt has essentially stopped being in touch with [his non-joint child] . . . since this custody dispute began.” The district court reasoned that Holt’s distant relationship with his non-joint child “weigh[s] in favor” of awarding sole physical custody of the child to

Kristina. The district court did not expressly state that Holt's parenting of his non-joint child affected the district court's determination of a parenting-time schedule.

The record supports the district court's analysis. The custody evaluator reported that, based on a telephone call with the non-joint child's mother, Holt spoke with his non-joint child only two or three times per year in 2019 and 2020 and had not seen his non-joint child in person since early 2019. Holt contends that he was unable to travel to and from Washington during those periods because of dissolution proceedings in Minnesota and the expenses associated with the proceedings. The record shows that Holt sought and accepted employment in Minnesota shortly after his non-joint child's birth. The record also shows that Holt did not often attempt to contact his non-joint child by telephone or video call, which could presumably have been accomplished without significant expense. Holt also has not demonstrated that the district court's consideration of this issue affected the determination of the parenting-time schedule.

Thus, the district court did not err by relying on evidence of Holt's relationship with his non-joint child.

3. *Ninth Best-Interests Factor*

Holt further contends that the district court erred in analyzing the ninth best-interests factor by ordering a parenting-time schedule that gives him less parenting time than he requested and that provides for multi-day gaps in his parenting time.

The ninth best-interests factor requires a district court to consider "the effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child's life." *Id.*, subd. 1(a)(9). Holt requested

a parenting-time schedule that gave the parties equal parenting time. Kristina requested a schedule that gave Holt parenting time every other weekend and one weekday per week. The district court adopted a parenting-time schedule that is more similar to Kristina's proposal. In discussing the ninth best-interests factor, the district court reasoned that the limited but phased parenting-time schedule would be a "less dramatic change" than the schedule proposed by Holt and that it would be "more beneficial for the child to have minimal transitions and minimal opportunities for the parties to have conflict."

As an initial matter, the parenting-time schedule ordered by the district court allows Holt to have the child for 35 percent of overnights per year, which is more than the 14 percent that was provided by the parties' informal agreement and more than the statutory minimum. *See* Minn. Stat. § 518.175, subd. 1(g) (2022). The district court's focus on minimizing the number of parenting exchanges between Holt and Kristina is justified by the evidentiary record, which shows that exchanges between the parties often were a source of conflict. Kristina's testimony and several trial exhibits support the district court's statement that parenting-time hand-offs were contentious.

Thus, the district court did not err by ordering a parenting-time schedule that gives Holt less parenting time than he requested.

4. Ultimate Determination

Holt contends that the district court improperly weighed the testimony and evidence presented at trial and erred by not ordering that each parent have equal parenting time.

Holt asserts that his witnesses testified credibly about his attentiveness and engagement as a parent, the child's affinity for him, and his genuine love for the child. He

argues that, based on his evidence, the district court should have awarded him equal parenting time. But the custody evaluator and Kristina presented other views of Holt's parenting, which showed that Holt became involved in parenting the child only after Kristina initiated dissolution proceedings. The district court carefully considered the testimony of all witnesses and placed particular weight on the custody evaluator's testimony. We afford broad discretion to the district court in making a parenting-time determination, especially when the evidence is conflicting. *See Hansen*, 908 N.W.2d at 596-97. Nothing in the record indicates that the district court abused that discretion.

Thus, the district court did not err in its award of parenting time.

B. First Right of Refusal

Holt also argues that the district court erred by not ordering that each parent has a right to parenting time in lieu of the other parent's use of childcare or a babysitter, which he calls "a first right of refusal."

Holt did not make this specific request in his proposed order. He requested language that would have provided merely that a parent who has "other obligations" during his or her parenting time "shall welcome the other parent to provide assistance." The district court did not adopt Holt's proposed language. In his motion for amended findings, Holt asked the district court "to provide for the parties to be able to provide childcare while the other parent is working." In its order denying the motion, the district court acknowledged the request but did not grant it.

On appeal, Holt contends that the district court erred on the ground that he has a right to parenting time whenever Kristina is unable to care for the child. He cites several

appellate opinions for the proposition that a district court must presume that parental care, rather than third-party care, is in a child's best interests. The opinions cited by Holt are distinguishable because each concerns a custody dispute between a parent and a non-parent relative.¹ Holt has not cited any caselaw for the proposition that, in a dispute between two parents, one parent is entitled to parenting time whenever the other parent is unable to care for a joint child, and we are unaware of any such authority.

Thus, the district court did not err by not ordering that each parent should have a right to parenting time in lieu of the other parent's use of childcare or a babysitter.

II. Child Support

Holt also argues that the district court erred by not deviating downward from the presumptive amount of child support.

A district court may deviate from the presumptive child-support obligation "to encourage prompt and regular payments of child support and to prevent either parent or the joint children from living in poverty." Minn. Stat. § 518A.43, subd. 1 (2022). Specifically, a district court "must take into consideration" certain statutory factors "in setting or modifying child support or in determining whether to deviate upward or downward from the presumptive child support obligation." *Id.*; *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013).

¹See, e.g., *Wallin v. Wallin*, 187 N.W.2d 627, 630-31 (Minn. 1971) (grandparents); *State ex rel. Merritt v. Eldred*, 29 N.W.2d 479, 480-81 (Minn. 1947) (stepfather); *State ex rel. Fossen v. Hitman*, 205 N.W. 267, 267-68 (Minn. 1925) (aunt and uncle).

In the proposed judgment and decree that Holt submitted after trial, he made a brief reference to a downward deviation but did not request a deviation of a specific amount. Rather, Holt proposed a basic child-support obligation that was the same as the child-support obligation generated by the statutory formula, which tends to imply that a deviation does not apply. In the judgment and decree, the district court ordered a basic child-support obligation that matched the child-support obligation generated by the district court's calculation, without mentioning the issue of deviation. Holt did not include the deviation issue in his motion for amended findings.

On appeal, Holt does not argue that the district court erred by not expressly considering a deviation. He also does not argue that any particular statutory deviation factor applies. He simply contends that his child-support obligation is excessive in combination with his child-support obligation to the mother of his non-joint child, his interest in traveling to Washington state to visit his non-joint child, and his interest in allowing his two children to visit with each other. Holt's argument is diminished by the custody evaluator's observation that Holt has seldom spoken with his non-joint child in recent years and has not visited his non-joint child in person since early 2019. Given the manner in which the issue was presented, Holt has not demonstrated that the district court abused its discretion by ordering a basic child-support obligation that does not deviate from the presumptive child-support obligation for the period of July 1, 2021, to December 31, 2021. We note that Holt does not argue that the CSM erred by not deviating from the presumptive child-support obligation for the period beginning January 1, 2022. The

absence of such an argument is consistent with the fact that Holt did not present it to the CSM.

Thus, the district court did not err by not deviating downward from the presumptive child-support obligation for the period of July 1, 2021, to December 31, 2021.

III. Allocation of Debts

Holt next contends that the district court erred by holding him responsible for certain debts and ordering him to reimburse Kristina for her payment of the debts before the dissolution.

As an initial matter, we note the parties' agreement that the district court erred in paragraph 13 of its conclusions of law on the ground that it is duplicative of paragraph 14. The parties also agree that paragraph 13 should be stricken. We adopt the parties' agreement and their suggested remedy of modifying the judgment and decree by striking paragraph 13 of the conclusions of law. *See* Minn. R. Civ. App. P. 103.04; *Sprangers v. Interactive Techs., Inc.*, 394 N.W.2d 498, 505 (Minn. App. 1986), *rev. denied* (Minn. Nov. 19, 1986).

Holt's remaining argument is his challenge to paragraph 14 of the district court's conclusions of law, which provides:

Each party is responsible for their own debts and debts in their own name. Except there is \$10,641 in medical debt related to the Child, [Holt] is responsible for \$7,874. If [Holt] proffers a receipt or other documentation showing payment related to a specific debt or disbursement from an HSA related to this debt, then the amount owed will be reduced by the amount paid by [Holt].

Holt contends that his prior payment of the medical debts at issue is proved by exhibit 46, a detailed spreadsheet he prepared that itemizes 88 medical expenses and the parties' payments of those expenses. Specifically, he contends that exhibit 46 shows that he has made payments totaling \$8,722.29, which is more than the amount for which the district court held him responsible.

Kristina contends in response that she disputed the facts stated in exhibit 46 and that the district court did not accept exhibit 46 as adequate proof of Holt's payments of the debts. But Kristina did not dispute all of the payments reflected in exhibit 46. She presented evidence (an affidavit introduced as exhibit 115) that Holt owes her a lesser amount, only \$1,525.23, for her payments of debts related to the child's medical expenses. Kristina's trial testimony is consistent with that exhibit. Accordingly, the evidentiary record supports a finding that Holt owes Kristina no more than \$1,525.23 for her payments of debts.

Kristina is correct that the district court did not accept exhibit 46 as adequate proof of Holt's payments of debts. The district court required Holt to prove his payment of each debt by submitting "a receipt or other documentation." In his motion for amended findings, Holt did not refer to or submit any receipts or underlying documentation of his payments of debts. Rather, he merely referred to exhibit 46, which the district court already had determined was inadequate proof. Holt's failure to submit the type of evidence described in the last sentence of paragraph 14 prevents him from qualifying for a reduction in the amount of his obligation to reimburse Kristina for her payments of debts.

Thus, the district court erred in paragraph 13 of its conclusions of law. We correct that error by modifying the judgment and decree by striking paragraph 13. The district court also erred in paragraph 14 of its conclusions of law by providing that Holt is responsible for \$7,874.00 of the parties' debts. We correct that error by modifying paragraph 14 to provide that Holt is responsible for \$1,525.23 of the parties' debts. Because Holt did not submit receipts or other documentation of his payments of the disputed amounts, the district court did not err by not reducing the amount owed.

IV. Attorney Fees

For her cross-appeal, Kristina argues that the district court erred by not making findings of fact before ruling on her request for need-based attorney fees.

In a dissolution proceeding, the district court "shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding" if it finds:

(1) that the fees are necessary for the good faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;

(2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and

(3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Minn. Stat. § 518.14, subd. 1 (2022). If a party seeks need-based attorney fees, a district court must make specific findings on each of the statutory requirements. *Richards v. Richards*, 472 N.W.2d 162, 166 (Minn. App. 1991). "Conclusory findings on the statutory

factors do not adequately support a fee award.” *Geske v. Marcolina*, 624 N.W.2d 813, 817 (Minn. App. 2001).

In this case, the judgment and decree states as follows: “The request for . . . fees is denied. Each party is responsible for their own attorney fees.” Kristina argues that the district court erred by not making specific findings concerning the statutory requirements applicable to need-based attorney fees. She is correct. The district court did not make any findings concerning the statutory requirements.

We are mindful that the absence of specific findings may not be fatal to an award of attorney fees if the district court “was familiar with the history of the case” and “had access to the parties’ financial records” and the necessary findings may be reasonably implied. *See Gully v. Gully*, 599 N.W.2d 814, 825-26 (Minn. 1999). But the district court in *Gully* made some findings on some of the statutory requirements, which allowed the supreme court to imply the missing findings. *See id.* at 820, 826. In this case, however, the district court made no specific findings whatsoever, and we are unable to draw the inferences that would be necessary to imply the missing findings.

Kristina requests that this court provide appellate relief by modifying the judgment and decree to order Holt to pay her attorney fees in the amount of \$20,000. We decline the invitation to resolve the motion in that manner. Kristina’s request for attorney fees should be decided in the first instance by the district court, which is more familiar with the facts and circumstances of the case and better equipped to make findings of fact.

Thus, the district court erred by not making findings of fact before ruling on Kristina’s request for need-based attorney fees. Therefore, we remand the matter to the

district court for the necessary fact-finding and reconsideration of Kristina's request for attorney fees. We leave to the district court's discretion the question of whether to reopen the record.

Affirmed in part as modified, reversed in part, and remanded.